

## ARTICLE V

### POST AWARD DEVELOPMENT

#### 5.1. Evidence of Capability to Perform.

5.1.1. On or before the date of Financial Closing (as defined below), but in no event later than December 31, 2001, with all items to be provided concurrently, the Lessor shall provide to the Government:

(a) Evidence of debt and equity (which for this purpose shall include a minimum cash equity commitment of \$15 million by the Lessor) closings in an aggregate amount no less than that required to fund all anticipated project costs as determined by the Lessor, subject to the reasonable approval of the Government, as such total hard costs, fees and other soft costs necessary to acquire, develop, construct and improve the Leased Premises in accordance with the requirements of this Lease ("Total Project Costs") are set forth on the project budget attached to this Lease as Schedule 5.1.1 (the "Project Budget"). The Lessor shall use its best efforts to maximize the par amount of, and available proceeds under, the Project Financing. In the event the Project Financing results in aggregate available funds (which for this purpose shall include the minimum cash contribution to such aggregate funding by the Lessor of \$15 million) in excess of Total Project Costs, the first \$20 million plus 50% of all amounts in excess of \$20 million of such excess shall immediately be available to the Government following the closing of the Project Financing (the "Financial Closing") to pay costs associated with this Lease or the Facility which are the responsibility of the Government, as directed by the Government in its sole discretion. The other 50% of amounts in excess of \$20 million shall accrue to the benefit of the Lessor. Lessor agrees to permit active involvement of the Government and/or its financial advisors with respect to the placement of the Project Financing, including but not limited to review of financial disclosure statements and any other bond marketing materials, and oversight of the sale of project bonds. The Government agrees that its participation pursuant to this paragraph shall be for the purpose of ensuring that the Project Financing is placed in the manner that will be most efficient and cost-effective, and will generate the maximum proceeds.

(b) Evidence that the land closing(s) have occurred and that fee simple title to the Site is unconditionally and irrevocably vested in the Lessor, subject only to easements and other title exceptions reasonably acceptable to the Government, which evidence shall include a time-stamped copy of any deeds and a current title policy or commitment evidencing the status of title.

(c) Two (2) fully executed memoranda of lease in acceptable form and meeting the requirements of Section 2.12 above.

(d) Two (2) original, fully executed subordination, attornment and non-disturbance agreements consistent with Section 9.3 below.

(e) Copy of the fully-executed trust agreement for the Project Financing in form and content reasonably acceptable to the Government, together with two (2) original fully-executed counterparts of a disbursement agreement, to which the Government is a party, governing the disbursement of, among other things, Project Financing proceeds to be used for the Fit-Out, including the Fit-Out Allowance and the Above GSA-Standard Fit-Out Sums, the "stand-by" funding sums (described below) securing the Lessor's obligations in the event of Project Delay, the Service Reserve Account and any additional Fit-Out costs paid by the Government after the initial build-out and acceptance of the Leased Premises. The Lessor shall provide for forty-five (45) days of "stand-by" funding for use by the Government to satisfy its rental payment obligations to Lessor for any period of time between the Commencement Date and the Composite Acceptance Date (as defined below). The Lessor shall secure such "stand-by" funding through placement at Financial Closing of a portion of its development fee, such deposited amount being equal to \$7,274,608.37, in an interest-bearing escrow or trust account with the Lessor's Lender. Interest earned on such "stand-by" funds shall be for the benefit of, and available to pay, Total Project Costs. Alternatively, such amount may be "net funded" such that the escrow will contain the stipulated amount as of the Commencement Date, as demonstrated to the Government's satisfaction. The disbursement agreement shall provide that if the Government, in its sole and absolute discretion, makes a finding prior to the Commencement Date, which finding shall be made no earlier than thirty (30) days prior to the Commencement Date, that the construction and delivery of the Leased Premises has been delayed such that the Composite Acceptance Date may be later than the Commencement Date, Lessor and the Lessor's Lender shall consent to the Government immediately drawing, without condition or limitation, on the "stand-by" funds beginning on the Commencement Date, to reimburse the Government's rental payment obligations under this Lease for the period if any between the Commencement Date and the Composite Acceptance Date. The Government's ultimate retention of the "stand-by" funds shall be subject to a final resolution of the amount of Project Delay (as defined below) once the Composite Acceptance Date has been established in accordance with this Lease and shall be subject to repayment to the extent the Government draws funds to which it is subsequently determined it was not entitled. The trust agreement referenced above shall provide that, if the Government is making the Base Rent payments hereunder, the "stand-by" funds may not be used by the Lessor's Lender for any purpose other than as described in this paragraph, including a prohibition on any use of such "stand-by" funds as cash collateral following a default under the Project Financing.

(f) Two (2) original, fully-executed escrow agreements establishing an escrow into which Lessor shall have deposited a fully executed general warranty deed for the escrow agent to hold, which escrow shall provide that in the event of a bankruptcy involving Lessor or other default by Lessor in complying with its obligations with respect to the Purchase Option, then, at the time such Purchase Option may be exercised in accordance with the Lease, the Government shall have the right to tender the payment amount for the Purchase Option (determined in accordance with the terms of this Lease) to the escrow agent and receive the general warranty deed automatically and without any further action or requirement.

(g) Copy of executed contract, together with all exhibits and schedules, delineating development services between Lessor and LCOR PTO Development Services LLC (with R. William Hard as project principal) as the Developer, in form and content reasonably acceptable to the Government.

(h) Copy of executed contract, together with all exhibits and schedules, between Lessor and LCOR Asset Management Limited Partnership as the O&M Firm responsible for the operations and maintenance of the Facility, in form and content reasonably acceptable to the Government.

(i) Copy of an executed Base Building Architectural/Engineering contract, together with all exhibits and schedules, with the primary Facility design firm of Skidmore, Owings & Merrill LLP., in form and content reasonably acceptable to the Government.

(j) Copy of an executed Fit-Out architectural/engineering contract, together with all exhibits and schedules, with the primary Fit-Out design firm of Gensler Architecture, Design & Planning Worldwide, as the Fit-Out Space Planning and Interior Design firm, in form and content reasonably acceptable to the Government.

(k) Copy of an executed construction contracting agreement for the excavation and backfilling of the Project between Lessor and Roy F. Weston, Inc., together with all exhibits and schedules, in form and content acceptable to the Government.

(l) Copy of an executed Base Building and Fit-Out construction services agreement, together with all exhibits and schedules (the "Turner Contract"), with the primary Facility general contractor, Turner Construction Company, Inc. ("Turner"). The Turner Contract shall be in form and content acceptable to the Government and shall require Turner to substantially complete and turn over the Facility in Stages (as hereinafter defined) in full compliance with this Lease and in a timely manner in accordance with the Delivery Schedule. The Turner Contract shall provide for payment of liquidated damages in a *per diem* amount that is no less than the *per diem* Base Rent that the Government is obligated to pay under this Lease (calculated on a square footage basis for space which is not delivered in accordance with the Delivery Schedule). The liquidated damages provided under the Turner Contract must be covered by the general contractor's bond or covered by insurance, in each case acceptable to the Government and in each case naming the Government as an obligee/beneficiary of the proceeds thereof. Lessor agrees to assign to the Government Lessor's rights with respect to the collection of liquidated damages in the event the Government is obligated to pay Base Rent for any period between the Commencement Date and the Composite Acceptance Date greater than forty-five (45) days which is or may be caused by the actions or omissions of Turner, with Lessor retaining any liquidated damages against Turner in excess of those sums that may be claimed by the Government. Lessor agrees that the Turner Contract shall provide for a weighted average substantial completion of the Project within 978 calendar days of Lessor's written notice to proceed. Lessor further agrees to issue a written notice to proceed to Contractor on or prior to the date of Financial Closing. The Turner Contract must contain general terms and conditions that generally are standard for a

contract of its size, nature and scope. Lessor shall agree, and the Turner Contract shall provide, that change requests instituted by the Government will, to the maximum extent possible, be accommodated within the then-existing construction schedule without attribution of delay. The Turner Contract shall provide for Turner's continuance of work pending resolution of disputes between the Government and the Lessor, between the Lessor and Turner and/or Turner's suppliers and subcontractors. The Turner Contract shall require, as a condition to the final disbursement to Turner, that Turner shall execute a certification to the Government, together with appropriate invoices, budget reconciliations, paid receipts and other back-up information, regarding the amount of any savings between the guaranteed maximum price stipulated in the Turner Contract and the actual cost of all work performed by Turner thereunder. Lessor acknowledges and agrees that any allowance items, other than the Fit-Out Allowance, set forth in or referenced in the Turner Contract, are the sole risk of the Lessor, and the Government shall not be required to fund any costs or expenses related to an underestimate thereof. The Lessor shall provide to the Government a contemporaneous copy of each construction draw request package and any change order requests delivered to the Lessor's Lender or its agent, including all professional certifications, invoices and other back-up information related thereto, in the same form and with the same content as provided to Lessor's Lender, including any supplemental information requested by or on behalf of Lessor's Lender. The Lessor shall not approve any design-related change orders under the Turner Contract without prior written Government approval.

(m) True and correct copies of all payment and performance bonds or insurance policies regarding the construction of the Base Building improvements at the Facility, in each case in form and content reasonably acceptable to the Government. Any such bond shall name the Government as an additional dual obligee and shall be from a bonding company that is listed in Department of Treasury Circular 570 as an approved corporate surety company. Any such insurance policies shall name the Government as an additional insured.

(n) A Memorandum of Agreement ("MOA") between and among, at a minimum, the Lessor, the General Services Administration, the Advisory Council on Historic Preservation, and the Virginia State Historic Preservation Office in accordance with 36 CFR Part 800; provided, that Lessor shall have until January 18, 2002 to satisfy its obligations set forth in this sentence. The MOA shall be incorporated into and made part of this Lease at the time of the MOA's execution. The Lessor shall comply with all terms and conditions of the MOA related to the development of the Site.

(o) Two (2) fully executed certificates from Lessor regarding various factual matters raised herein, including without limitation, the following: confirming all matters addressed in Section 5.1.1(a) above; attaching a true and correct copy of all documents evidencing, governing or securing the Project Financing (the "Project Financing Documents"); attaching a true and correct copy of all documents pertaining to Lessor's acquisition of the Site; and confirming the accuracy of the Project Budget and the inability of the Lessor, the Lessor's Lender or any other entity to reallocate funds to Project Budget line items that are payable to Lessor, Developer or any of their respective affiliates.

**5.1.2.** If the Lessor is unable to satisfy the required conditions listed in Section 5.1.1. on or before the date of Financial Closing but in no event later than December 31, 2001, it is understood and agreed (i) that further performance of any obligations of Lessor under this Lease shall be suspended, other than the Lessor's good faith efforts to satisfy such conditions, and (ii) the Government's sole remedy for such breach, absent gross negligence or willful misconduct on the part of Lessor in satisfying its obligations hereunder, shall be the termination of this Lease by the Government, and if the Government exercises its right to terminate this Lease, such termination will be at no cost and without attribution of fault to either the Government or the Lessor.

## **5.2. Development Overview/Project Planning.**

**5.2.1. Introduction.** The remaining provisions of this Article V set forth the requirements for the design, construction, acceptance and occupancy of the Leased Premises and Facility. In order to meet the Delivery Schedule, it is imperative that the design and construction of the Base Building and the design and construction of the Fit-Out proceed on parallel tracks, through a detailed schedule which carefully integrates the Base Building and Fit-Out work. Such an integrated schedule requires coordination, cooperation, open lines of communication, and a close working relationship between the Government and the Lessor. The remaining provisions of this Article V set forth the process by which the parties shall coordinate and integrate the Base Building and Fit-Out design and construction in order to meet the requirements of this Lease in a cost-efficient and timely manner.

The Lessor shall (i) competitively bid all Fit-Out at the trade contractor level, and (ii) periodically submit to the Government design/construction budgets and projections for the Fit-Out, in each case as described in more detail below in this Article V. The Lessor shall deliver monthly to the Government, as described below, updates to the Project Schedule. Lessor shall comply with the Government's Program of Requirements (the "POR") attached hereto and made a part hereof as Schedule 5.2.1, subject to the provisions of Article VIII below, and Lessor agrees that in the event of any conflict or ambiguity between the terms and provisions of Article VIII or other provisions of this Lease and the POR, this Lease (without regard to the POR) shall govern and control.

**5.2.2. Phased Inspection/Occupancy.** The Lessor will design and deliver the Leased Space in seven (7) phases or stages (each a "Stage") as shown on the Delivery Schedule. Notwithstanding anything in this Section 5.2.2 to the contrary, (i) delivery of each Stage shall be accomplished in accordance with the Project Schedule (as defined in Section 5.4.6) once such schedule has been agreed to by the parties and definitively established, and (ii) the Government's obligation to accept substantially completed space is subject to the terms and provisions of Sections 5.7.8 - 5.7.12 of this Lease.

**5.3. Purpose of Government Reviews.** The Lessor is solely responsible for satisfying the minimum quality and performance requirements set forth in this Lease. As described in this Article V, the Government will review and approve many aspects of the Lessor's design and construction of the Facility, including without limitation, review of the Lessor's design and construction drawings, shop drawings, product data, finish samples and completed Base Building and Fit-Out construction. By so doing, the Government shall be attempting to work closely with the Lessor, in an integrated manner, to identify potential design flaws, to enhance the livability of the

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Facility in accordance with Section 8.5, to minimize costly misdirection of effort, and to assist the Lessor as it fulfills the Lessor's sole responsibility to continually monitor whether such design and construction comply with Applicable Laws and satisfy Lease requirements, including the Government's POR and the Government's desire to receive a high-quality Base Building and high-quality Fit-Out, in a manner that is within the applicable budget and schedule. The Lessor remains solely responsible for designing, constructing, operating and maintaining the entire Facility in full accordance with the requirements of this Lease. The design process with respect to the Fit-Out shall be an iterative process and each step in the design shall build upon the prior step with the ultimate result of the process being the Lessor's preparation and the Government's review and issuance of a "Notice to Proceed" with respect to the construction drawings for the Fit-Out for each Stage of the Leased Premises. Notwithstanding the foregoing and any review of the various design submissions by the Government, the Lessor shall remain responsible for the design and construction of the Fit-Out, subject to the understanding that the Government's issuance of a Notice to Proceed for each Stage of the construction shall be deemed an acknowledgment by the Government that the Fit-Out as shown on such construction drawings is suitable for the Government's intended use of the Leased Premises, but shall not in any manner be deemed acceptance or approval by the Government of the design or construction for compliance with Applicable Law, for conformance with the operational requirements of this Lease, for constructibility, for availability of materials specified, or for any other purpose; all of which shall remain the sole responsibility of the Lessor. With respect to modifications requested by the Government at any stage of the Fit-Out design process which are a change from the Government's accepted drawings at an earlier stage of the design process, such modifications shall be treated as a Change for the purposes of this Lease.

#### **5.4. Project Development.**

**5.4.1. Development Plan.** Within one hundred (100) working days of Award, the Lessor shall establish a plan and appoint personnel to manage both the Base Building and Fit-Out design and construction, and shall submit same to the Government. This development plan (the "Development Plan") will demonstrate the Lessor's understanding of the inter-relationship between the Base Building and Fit-Out design and construction, and shall describe and delineate between such phases. The Development Plan will describe in detail all topics set forth in this Section 5.4. The plan will include a staffing chart which delineates various functions, which lists all Project Team (as defined in Section 5.4.2) members, and which describes whether such personnel are responsible for Base Building, Fit-Out or both. Five (5) copies of the Development Plan shall be provided to the CO. The Government shall review the Development Plan and within twenty (20) working days of its receipt, the Government shall either accept it or shall require modifications to the plan in order to properly fulfill the requirements of this Lease.

**5.4.2. Project Team.** The project team ("Project Team") includes the Developer, the Base Building Architect, the Fit-Out Architect, the principal engineering consultants of each of the Base Building Architect and the Fit-Out Architect and the General Contractor. As part of the Development Plan, the Lessor shall detail how the Project Team members will work together at each design step described in Section 5.6 in order to provide a unified approach to all elements of the work. The Development Plan shall also include a description of the design and construction management organization and other Project Team members, which description shall include, at a minimum:

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- (a) The relationship of the interior Fit-Out design and construction management organization, including Lessor and Government functions and personnel, to the Lessor's Base Building Project Team.
- (b) Lines of authority and supervision.
- (c) Relationship to contractors and subcontractors.
- (d) Listing of all design and construction personnel, including position, home office address, name, telephone number and pager number. Listing shall include at a minimum the following: Lessor's principals and key staff, including the Project Executive (as defined in Section 5.4.3), architect principals; engineering principals; lead designers (architectural, interior designer, mechanical, electrical and structural); and specialty consultants, if any, including, but not limited to acoustical, elevator, food service, and fire protection.

No substitutions (voluntary or involuntary) shall be made in the Project Team or in key members of the Project Team without the prior written approval of the Government, in its sole discretion, including a determination by the Government that the proposed substitute satisfies the original qualification requirements for such Project Team member, as set forth in Sections B and C of the SFO. No increases in contract pricing will be allowed when substitutions are authorized by the Government.

**5.4.3. Construction Manager.** For the construction phase of the Fit-Out, the Lessor shall designate an individual project executive (the "Project Executive") to coordinate and supervise all such construction work. Such individual shall have appropriate experience to provide direction to the work and to ensure conformance with the requirements of applicable building codes, fire and safety codes and approved construction documents. Said individual shall meet all requirements of the local building authorities and be acceptable to the Government. The Project Executive shall be located on Site.

**5.4.4. Cost Control.** The Development Plan shall detail how design and construction costs related to the Fit-Out will be controlled internally and how payment requisitions will be generated. It shall also indicate how the Lessor will maintain quality at the lowest overall cost to the Government and how price adjustments for Government directed changes will be minimized. The Development Plan shall describe how selecting alternative options, cost estimating and monitoring will be performed.

**5.4.5. Quality Control.** The Development Plan shall include a narrative describing the general approach for inspections and tests of all major building systems and features supported by a preliminary outline of building components that will impact or demonstrate attainment of performance requirements. The Development Plan shall outline specific controls to be put in place to guarantee quality within the design and construction of the Fit-Out, and shall identify the specific personnel having responsibilities for maintaining this program.

**5.4.6. Project Schedule.**

(a) At least ten (10) working days prior to Financial Closing, the Lessor shall prepare a schedule (the "Project Schedule") which shall reflect the phased development described in Section 2.5 above and which shall adhere to the substantial completion dates for each Stage, as set forth in the Delivery Schedule (such Stage substantial completion dates as set forth on the Delivery Schedule are referred to as the "Required Delivery Dates").

The Project Schedule shall start as of June 1, 2000, and shall graphically represent, in as much detail as is reasonably possible (i) all major post-award responsibilities and pre-design activities (e.g., financing, site acquisition, contract awards, site plan and other governmental approvals, Development Plan submission, executive presentations and design workshop), (ii) all design activities (e.g. Program Verification and Space Analysis, Universal Plan and, for each Stage, Space Plans, DIDs and CDs), and (iii) the competitive bidding and construction period for each Stage, together with Substantial Completion of each Stage, the period for Government final inspection and the scheduled Government acceptance date (which may not be later than the Required Delivery Dates).

The Project Schedule shall integrate and show all Government review and inspection periods consistent with and as required by Section 5.6.1 or otherwise by any provision in Article V of this Lease. Budget and cost estimate submissions shall be deemed to be a part of the applicable design submissions and need not be shown as a separate activity, except that all competitive bidding shall be shown as a separate activity. In addition, the Project Schedule shall integrate and show major design, approval and construction activities for the Base Building and shall reflect the inter-relationship between the scheduling of all Base Building and all Fit-Out. The end date of each of the activities described in items (i) through (iii) in the preceding paragraph shall be referred to as a "Schedule Milestone."

When accepted by the Government, the Project Schedule shall become the definitive design and delivery schedule for the development of the entire Facility from which all Delay shall be calculated. Delays occurring before acceptance of the Project Schedule shall be treated in accordance with Article IX. The Schedule Milestones shall be deemed to have been accepted by the Government when it approves the Project Schedule. In no event shall the Government be obligated to approve a change in the Required Delivery Dates.

(b) Within twenty (20) working days after the closing of the Project Financing, Lessor shall prepare a preliminary construction schedule for the Base Building construction (the "Base Building Construction Schedule"). Such Base Building Construction Schedule shall be in sufficient detail to allow reviews of activities for individual Buildings, and for all major elements of such construction, including without limitation, structural, mechanical, electrical, plumbing, elevators, architectural finishes, parking facilities, roads and site work. The Base Building Construction Schedule shall identify potential long lead-time items. When reviewed by the

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Government, such Base Building Construction Schedule shall become a part of the Project Schedule.

(c) Within eighty (80) working days after the closing of the Project Financing, Lessor shall provide a preliminary construction schedule for each Stage of the Fit-Out showing major elements of such construction (i.e., drywall, ceiling grid, lights, HVAC ductwork, plumbing, electrical and interior finishes) (the "Fit-Out Construction Schedule") (the Base Building Construction Schedule and the Fit-Out Construction Schedule shall hereinafter sometimes be referred to, individually, as a "Construction Schedule" and collectively, as the "Construction Schedules"). When accepted by the Government, such Fit-Out Construction Schedule shall become a part of the Project Schedule.

(d) From time to time as appropriate, but in all events no later than the earlier of (i) for Base Building construction (A) obtaining the necessary permits to allow such work to commence and (B) completion of CDs for such Base Building construction, and (ii) for Fit-Out construction (A) obtaining the necessary permits to allow such work to commence and (B) receipt of the bids for each Stage of such Fit-Out, Lessor shall provide (as a supplement to and as part of the Project Schedule and Construction Schedules), an updated Construction Schedule for the applicable portion of the Base Building Construction or Fit-Out reflecting (i) all activities to be carried out as part of such construction and (ii) the actual intended sequence and timing of such construction activities. All such final Construction Schedules shall reflect all slack times and "float periods;" shall be realistic and shall represent the Lessor's best judgment and intended plan for execution of all construction work; and shall define activities at a level of detail sufficient to support effective planning, control, status reporting and monitoring.

(e) The Lessor is required to operate in both anticipatory and reactive modes in order to see that the Project Schedule, including each integrated Construction Schedule, is met. The Lessor shall take the initiative, act in advance to generate activity, and follow-up so that all services are started and completed in accordance with the Project Schedule.

(f) The Project Schedule, all Construction Schedules and all supplements and updates thereto shall be provided to the Government in electronic format and in print format, subject to Sections 5.4.9 and 5.6.9.

(g) The Government shall have twenty (20) working days to review and either accept the proposed Project Schedule (with the exception of the Required Delivery Dates which are accepted as of the date hereof) or to require revisions thereto in order to meet the requirements of this Lease. Once accepted in writing by both parties, the Schedule Milestones shown on the Project Schedule shall become the baseline against which Lessor Delay and Government Delay is measured. In complying with those time tables and dates set forth in the accepted Project Schedule, time is of the essence.

(h) The Lessor is required to update the accepted Project Schedule (including Construction Schedules) on a monthly basis, as set forth in Section 5.6.9; provided,

however, such monthly updates are for information only, and do not constitute a revision to the established Project Schedule unless the CO specifically agrees in writing to amend the Project Schedule.

(i) If the Lessor desires to accelerate the delivery of any Stages in advance of the Required Delivery Dates, the Lessor shall provide the Government with as much prior notice of such proposed accelerated delivery dates as is possible.

**5.4.7. Executive Presentations.** The Lessor shall provide to the Government two (2) executive presentations at a time and place within the Washington, DC metropolitan area designated by the CO. These presentations shall be attended by the Lessor's key personnel as well as appropriate members of the Lessor's Development Team. The first presentation will involve a macro-level discussion of the development concept (accompanied by the architectural model and other appropriate aids), and the second presentation will involve a more detailed presentation of the Development Plan, Project Schedule and description of all design and construction steps. The Development Plan shall acknowledge this obligation.

**5.4.8. Photographs.** After commencement of construction, the Lessor shall submit, on a monthly basis, in either print or digital format (two (2) sets of print or one (1) set of digital), twenty-four (24) 5" by 7" color photographs reflecting the development of the entire Facility. All photographs shall be taken by a competent photographer experienced in architectural or technical photography, as appropriate. All will become the property of the Government upon delivery to and acceptance by the COR. Each photograph shall be accompanied by at least the following information: name and location of site; date taken; identity of Lessor; what was photographed and from where taken; and identity of photographer. In any event, at least ten photographic sites shall remain constant throughout the project life, as such sites are mutually determined by the Lessor and the Government. The Development Plan shall acknowledge this obligation.

**5.4.9. Website/Electronic Formatting.** The Lessor at its option may develop an Internet website for the USPTO headquarters consolidation project. If the Lessor develops such a website, the website may include both a public information area in form and with content as approved by the Government and a secured private information area with appropriate software firewall protections and controlled access. Among other things, the secured private information area may be used as the vehicle to distribute all deliverables required or desired under this Lease (other than notices and Government acceptances) which can be distributed in electronic format, including meeting minutes, the Project Schedule and updates to the Project Schedule, project photographs, budgets and Cost Estimates, plans and specifications, including the Space Analysis, Space Plans, DIDs and CDs for all stages of the project, cost reports or requisitions and any other information capable of delivery in electronic format. To the extent any deliverable or other information is provided in a timely manner (which shall mean one (1) business day prior to the date such deliverable or information is due) to the Government in electronic format through the website, there shall be no requirement to deliver hard or print copies of such deliverable or other information.

## **5.5. Base Building Design and Construction.**

**5.5.1. Introduction.** The Lessor shall produce the Base Building construction documents in conformance with the requirements of the Lease. The Lessor shall schedule the production of Base Building construction documents such that all information required for the Fit-Out design is available in a timely manner. The Lessor shall schedule the Base Building construction such that Base Building construction is completed to an appropriate level before Fit-Out construction begins. The Government has approved the Base Building design as described in this Lease and the schedules attached hereto, including the Design Documents. The Government has approved the Turner Contract. There shall be no changes or revisions to the Base Building design without prior written Government approval, including without limitation, any proposed design-related change orders under the Turner Contract.

**5.5.2. Government Copies.** The Lessor shall provide the following Base Building drawings (at half of their original size) to the Government for its use: site plan and landscape plan, representative architectural plans, exterior elevations showing window placements and materials selections. The Lessor shall provide other Base Building drawings such as architectural details, structural, mechanical, electrical or plumbing drawings to the Government for review in all instances where such drawings include substantive changes from the drawings made a part of this Lease or subsequently submitted to the Government. In addition to graphically highlighting any material changes on the drawings themselves, the Lessor shall provide to the Government a brief narrative description listing each such change from the Lessor's drawings included in this Lease, as well as the reasons for such change. The Government shall review the submitted Base Building drawings only for general conformance with the requirements of the Lease.

**5.5.3. Architectural Model.** Within forty (40) working days after the Financial Closing, Lessor shall provide a detailed architectural model of the entire Facility. The Lessor may utilize the existing massing model base. The architectural model shall display each Building's overall configuration and massing in the context of the Site. It shall depict topography, pedestrian and vehicular circulation, parking, and landscape features. It shall also depict the materials, colors, and details on each building's exterior, including the window/glazing details.

## **5.6. Tenant Fit-Out Design and Pricing.**

### **5.6.1. Introduction.**

(a) The Government has provided the Lessor with the POR, receipt of which is hereby acknowledged by the Lessor. As described in more detail below, the Lessor shall perform a Program Verification and shall produce a Space Analysis, Universal Plan and related Budget (as such terms are defined in Sections 5.6.3, 5.6.4 and 5.6.8) for the Fit-Out of the entire Facility. Subsequent to the Space Analysis, the Lessor shall produce the Fit-Out design submissions in seven Stages. Construction and delivery of constructed spaces shall also occur on a Stage by Stage basis. As described in more detail below, for each Stage, the Lessor shall prepare and submit for Government review and acceptance, a Space Plan, DIDs and CDs, as well as a Cost Estimate for each such design submission (as such terms are defined in Sections 5.6.5 - 5.6.8). The Lessor shall competitively bid the Fit-Out work for each Stage or group of Stages, in accordance with the requirements of Section 5.6.10, to ensure that

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the proposed Scope of Work (as defined in Section 5.6.10) can be completed within the Fit-Out Allowance allocated to such Stage or Stages, as based on the Budget and previous Cost Estimates.

(b) The design of the Joint Use Spaces located in each Stage shall proceed on a parallel track with that of the general office space. Within each track, however, the Lessor shall phase and schedule the design process such that no more than one (1) design submission is delivered to the Government within any period of ten (10) working days, not including revisions or resubmissions. This means, for example, that during any ten (10) working-day period, the Lessor shall deliver to the Government no more than one (1) Space Plan, or one (1) set of DIDs, or one (1) set of CDs (in each case covering, at most, one (1) Stage. This timing requirement shall not apply to revisions or resubmissions, which are described below. If the Lessor fails to make a complete and sufficiently detailed submission by the date established in the accepted Project Schedule for that Fit-Out design submission (Program Verification, Space Analysis, Universal Plan, Space Plan, DIDs or CDs), the same shall constitute Lessor Delay. The Government shall review the proposed Space Analysis and shall provide written comments within ten (10) working days of receipt. The Government shall review the proposed Universal Plan and shall provide written comments within ten (10) working days of receipt. The Government shall review each Space Plan and shall provide written comments within twenty (20) working days of receipt. The Government shall review each DID submission and shall provide written comments within thirty (30) working days of receipt. The Government shall review each CD submission and shall provide written comments within twenty (20) working days of receipt. The Lessor shall incorporate the Government's comments into each subsequent design submission, except that the CD review comments will be included in a revised CD submission by the Lessor. The Government shall review and provide written comments to each revised CD submission within ten (10) working days of receipt. The Government may, at its election, include its comments to the revised CDs in a Notice To Proceed (as defined in Section 5.7.1), in which case further CD submissions from the Lessor are not required. If, however, the Government reasonably believes that its CD comments entail substantive changes to the Scope of Work, the Lessor shall be required to revise and resubmit the CDs within ten (10) working days of receipt of the Government's written comments. The Government shall review and comment within five (5) working days of receipt of any subsequent revisions, said process continuing until, in the Government's reasonable estimation, resubmission is not required. The Government's review and approval of the CDs for a particular Stage is limited to the documents' conformance to the specific requirements of this Lease and to the approved DID plans and specifications for that Stage.

(c) In every case, the Lessor shall incorporate the Government's review comments, except to the extent that, in the Lessor's best professional judgment, those comments do not conform to Applicable Laws or to best industry standards or practices. If the Lessor does not incorporate a review comment, the Lessor shall provide a written response to the Government, indicating why the Government reviewer's objection and/or recommended course of action was not followed. Any increases in the design costs for a particular Stage which result from a design change to a previously-

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approved design submission for that Stage, shall be reimbursed by the Government; provided, however, the Government may require the Lessor to make value engineering changes at its own cost if those changes are required due to inaccuracies in the Cost Estimate or Budget for the previously-approved design submission.

(d) The Lessor shall prepare the proposed Project Schedule and shall assign task durations in the context of an integrated project delivery per the requirements of this Lease. The Government suggests, based on its past experience with projects of similar scope, that appropriate durations for Lessor design activities should be as follows: Program Verification and Space Analysis of entire Facility, sixty (60) working days; Universal Plan, thirty (30) working days; Space Plans for a Stage which includes Joint Use Space and of the first Stage of office space, fifty (50) working days per Stage; Space Plans of typical office space, thirty (30) working days per Stage; DIDs, sixty (60) working days per Stage; CDs, sixty (60) working days per Stage; and CD Revisions, twenty (20) working days per Stage.

Throughout the design process, the Government shall cooperate with the Lessor and shall provide, in a timely manner and in accordance with the accepted Project Schedule, all information which may be reasonably required by the Lessor to produce each design submission.

**5.6.2. Design Workshop.** After award of the Lease, the Lessor shall sponsor a design workshop, which shall be a two to three day event led by design professionals and attended by representatives of the USPTO, GSA and the Lessor (including, at a minimum, members of the A/E Firm, Interior Architect, General Contractor and Developer). The Lessor shall provide facilities for the workshop, an independent facilitator with a knowledge of design issues, and a reporter who will document the proceedings and produce the final report. The Government may, at its sole expense, invite a panel of prominent design professionals to participate in the workshop, which may include practicing architects, educators, theorists, critics, writers, and other individuals in design related fields. The purpose of the workshop is for the Government and the Lessor to learn about current design issues and approaches which may be applicable to the USPTO project, and for both to freely discuss their concerns and their responses to ideas raised within the workshop.

**5.6.3. Program Verification and Space Analysis.** The Government has provided the Lessor with a printed copy of the POR which includes the number and size of spaces required for the Joint Use Spaces, distributed spaces, office spaces and support spaces and shall promptly provide a copy in electronic format. The POR includes adjacency requirements and prototypical space layouts for standard office types and support spaces.

The Lessor shall conduct interviews with the USPTO as required to verify that the exact office quantities and sizes are correct (the "Program Verification"). Based on the results of the Program Verification, the Lessor has prepared a space analysis dated February 19, 2001 ("Space Analysis") and accepted by the Government on March 1, 2001, which Space Analysis is hereby incorporated by reference into this Lease. The Space Analysis shall include an updated POR provided in an electronic format acceptable to the Government and coordinated by the Lessor which shall include a listing of the quantity, size and adjacency requirements for every space in the Facility. In addition, the Space Analysis shall include blocking and stacking

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drawings for the entire Facility. The Lessor shall produce blocking and stacking drawings based on the Program Verification. When submitting the Space Analysis to the Government, the Lessor shall also submit the Budget for the Fit-Out of the entire Facility.

**5.6.4. Universal Plan.** Within thirty (30) working days after completion of the Program Verification and the Space Analysis process (including receipt and response to Government comments), the Lessor shall develop and shall deliver to the Government for its review and acceptance in accordance with Section 5.6.1, a universal plan (the "Universal Plan") and narrative related thereto which will be used as the basis for the design of the office space. The Universal Plan shall address placement of distributed spaces, uniformity of circulation patterns and the relationship of workstations to their support spaces. The Universal Plan shall accommodate layout variations from floor to floor, and shall facilitate the evolution of the USPTO from a paper oriented to an automated environment. The Lessor shall refine the Universal Plan after testing its validity during completion of Space Plans for the first Stage of office space and shall submit the revised Universal Plan to the Government for Government review and acceptance.

**5.6.5. Space Plans.** "Space Plans" are defined as fully dimensioned (i.e., drawn to scale) drawings of the Leased Premises, or applicable portion thereof, which include basic architectural information, including: wall types and locations, and door types and locations. No specifications are required with Space Plans. The Lessor shall include a Cost Estimate with the Space Plans for each Stage. The Space Plans for a particular Stage shall include the most current Base Building information for that Stage to the extent it is required or necessary in order to coordinate the Fit-Out design.

**5.6.6. Design Intent Documents.** The Lessor shall incorporate all of the Government's Space Plan comments for each particular Stage into the design intent documents for the Fit-Out for that Stage or if a comment is not incorporated, shall respond in writing, as described in Section 5.6.1. Design intent drawings and related documents ("DIDs") shall include all appropriate drawings and related information, including but not limited to the following:

- All interior plans
- Interior wall/partition details
- Interior finish plans, schedules and samples
- Interior elevations
- Typical casework and cabinetry details
- Generic furniture plans for the typical office space; furniture, loose fixtures and equipment location plans (inventory of Tenant's furniture and equipment shall be supplied by the Government) for remainder of space
- Fit-Out toilet room layouts/details (architectural)
- Floor equipment room, elevators, stairwells, and wire closets location (architectural)
- Food service equipment layout (architectural) (if applicable to the Stage in question)
- Perspectives of Cafeteria seating area and serving area (if applicable to the Stage in question)
- Perspectives of Fitness Center (if applicable to the Stage in question)
- Perspectives of Child Care Center (if applicable to the Stage in question)

- Perspectives of Public Search Facility (if applicable to the Stage in question)
- Equipment schedules
- Location of security devices and spaces
- Fire alarm system manual pull stations and smoke detector locations
- Voice/data/electric location plan (coordinated with generic furniture locations)
- Reflected ceiling plans, including lighting fixture locations and switching controls locations
- Identification of any tenant required mechanical, electrical or plumbing floor space requirements.

For any information that cannot be incorporated onto the drawings, the Lessor shall provide draft specifications and related catalog material which describe all building equipment, characteristics and material requirements in sufficient detail to prepare the Cost Estimate which shall accompany each DID submission. All DIDs shall include the most current Base Building information to the extent it is required or necessary in order to coordinate the Fit-Out design.

#### **5.6.7. Construction Documents.**

(a) The Lessor shall incorporate all of the Government's DID comments for a particular Stage into the construction drawings, specifications, calculations and related documents ("CDs") for the Fit-Out for that Stage, or if such comments are not incorporated, shall respond in writing pursuant to Section 5.6.1. The CDs shall include all building elements, including but not limited to, architectural, mechanical, electrical, plumbing, fire safety, lighting, structural, and any other elements of the work required to make the project complete. CDs shall also be annotated with all applicable specifications. The resulting product shall reflect requirements which are substantially the same as those approved at the DID submission for that Stage, and shall incorporate neither extraneous additions nor deletions of requirements. The CDs shall be of sufficient detail to obtain all necessary permits, to competitively bid the applicable Stage and to construct such Stage.

(b) Final CDs shall be signed by, bear the seal of, and show the state certificate number of the architect and/or engineer who prepared the document and/or is responsible for its preparation. The seal shall include any additional information required by the governing jurisdiction.

(c) The Government shall have those rights of review, acceptance and rejection of the CDs as are set forth above in Section 5.6.1. A refined Cost Estimate shall accompany each CD submission, and shall reflect Government comments and concerns to the Budget and to Cost Estimates from previous design submissions. The CDs for a particular Stage shall include the most current Base Building information to the extent required or necessary in order for that Stage to coordinate the Fit-Out design.

**5.6.8. Cost Estimates.** When the Lessor submits its proposed Space Analysis for the Government's review and acceptance in accordance with Section 5.6.1, the Lessor shall also provide a budget (the "Budget") for all Fit-Out required under this Lease. The Budget shall be

delineated on a Stage-by-Stage basis in accordance with the Lessor's proposed construction and delivery schedule, and shall pro-rate the Fit-Out Allowance and the Above GSA-Standard Fit-Out Sums among such Stages in such manner as the Lessor deems appropriate so as to properly complete each such Stage in accordance with the requirements of this Lease. The Lessor shall also provide a cost estimate ("Cost Estimate") for each Stage of the Fit-Out at each of the Space Plan, DID and CD design submissions steps. The Budget and each Cost Estimate shall be at a level of detail consistent with the submitted drawings, and each Cost Estimate for DIDs and CDs shall be in 16-division CSI format. The Lessor shall estimate any mechanical, electrical or plumbing costs which are required by architectural information shown on a submission, although the specifics of the mechanical, electrical or plumbing design may not be shown. The Cost Estimates shall be refined and improved through each successive submission design step, to reflect the Lessor's prior experience and knowledge as well as the Government's concerns regarding prior Cost Estimates. The Government may require the Lessor to make value engineering changes in a design submission at the Lessor's own cost if such changes to the current submission are required due to inaccuracies in the Cost Estimate or Budget for the immediately preceding design submission for that Stage. Such Budgets and Cost Estimates (and any revisions thereto) shall not constitute "Proposals for Adjustments" or "Cost and Pricing Data" as such terms are understood pursuant to Article IX.

Each Cost Estimate shall demonstrate the design conformance for that Stage to the pro-rated amount of Fit-Out Allowance and Above GSA Standard Fit-Out Sums to be utilized for such Stage, as said allocated amount is set forth in the Budget. The Lessor shall submit a cost control report with each Cost Estimate if construction cost estimates exceed the allocable portion of the Fit-Out Allowance and Above GSA Standard Fit-Out Sums, as set forth in the Budget. This cost control report shall identify the components of the Cost Estimate which caused the excess costs, shall provide a reconciliation of the current Cost Estimate with the most recent previous estimate, and shall identify means, materials, assemblies or components that could be designed or specified differently that would bring the estimated construction costs within the Budget.

**5.6.9. Schedule Updates.** The Lessor shall update monthly the Project Schedule, which updates shall be in electronic format such as Primavera® or similar scheduling software. The monthly report to the Government shall set forth up-to-date and accurate progress data based upon the Lessor's best judgment, and shall be prepared by the Lessor in consultation with all principal Project Team members and other consultants, contractors, construction managers and suppliers. The monthly report shall also discuss any Project Schedule Milestones or task completion which have been missed by the Lessor or the Government and shall describe all actions which the Lessor shall take to regain the lost time attributable to the Lessor. These monthly schedule updates are provided to the Government for informational purposes only; they shall not constitute an amendment to the approved Project Schedule unless the CO specifically agrees in writing to such amendment of the Project Schedule.

**5.6.10. Final Pricing/Bidding.** Upon completion of CDs for each Stage or for a combination of Stages, as such combination may be approved by the Government taking into account both cost and schedule concerns and upon Government acceptance of such CDs and the Government's issuance of a written notice to Lessor to proceed with bidding the Fit-Out work reflected in such CDs, the Lessor shall competitively bid such Fit-Out work to ensure that the proposed scope of work as set forth in the approved CDs (the "Scope of Work") can be

completed, in accordance with the requirements of this Lease, within that portion of the Fit-Out Allowance and Above GSA-Standard Fit-Out Sums allocated in the Budget to the completion of that Stage or Stages. All bidding shall be concluded in accordance with those timeframes set forth in the approved Project Schedule.

To ensure that the CO may accept a price based upon a competitive proposal, the following minimum conditions shall be met:

- (a) The fees for all contracting levels above the bidding party (Lessor and/or general contractor and/or architect) shall be as set forth on Schedule 3.1, and if bid below the level of the general contractor, the general contractor's overhead and general conditions shall be a single percentage markup equal to ten percent (10%) of the cost of the work in question. The general contractor's general conditions shall include, but not be limited to, those set forth on Schedule 5.6.10. It is the intent of the Lessor and the Government that the general contractor's general conditions conform to the general contractor's general conditions customarily found in the Washington, D.C. area for work of similar size and complexity. The Government and Lessor intend that subcontractor (i.e., 'bidding party') general conditions will include subcontractor costs for certain cost categories listed on Schedule 5.6.10 provided that such subcontractor costs are customarily included as part of such subcontractors' costs in the Washington, D.C. area for work of similar size and complexity (e.g., temporary toilets are always a general contractor general conditions costs while small tools and consumables can be both a general contractor and subcontractor general conditions cost).
- (b) The Scope of Work is clearly defined in the requests for proposals to each competitor. No Base Building items are to be included.
- (c) A minimum of three (3) qualified contractors shall be invited to participate in the competitive process, and each participant shall compete individually (no collusion).
- (d) At least five (5) working days prior to issuance of any request for proposal, the Lessor shall submit to the CO (i) a list of the solicited contractors, and (ii) a copy of the request that is being sent to those contractors.
- (e) Bids shall be submitted on a lump-sum basis together with a breakdown of costs using a 16-division CSI format and shall include such other information as shall be reasonably required by the Lessor and/or Government.
- (f) The Government will be represented at the opening of the competitive bids, which will be scheduled at a time agreeable to both the Lessor and the Government.
- (g) Each submitted proposal shall be provided to the Government for its review. The proposals shall be summarized in the form of a spreadsheet subdivided according to the applicable Scope of Work. The Lessor is responsible for determining that the requirements of the Scope of Work have been met. The CO reserves the right to form a judgment as to whether the competitive proposals meet the Scope of Work (without

incurring any responsibility or obligations based upon such determination), that the price is reasonable, and that the contractor is qualified to perform the work.

The Lessor shall certify in writing to the Government that best efforts have been made to obtain competitive pricing (within the above terms), and that the Lessor shall accept all responsibility for all prices through direct or indirect contracts with the contractors. The competitive proposals shall include the total price.

If the Lessor determines that a bidder meets the Scope of Work and is the lowest price responsive bid or if the Lessor agrees that the cost to the Government will not exceed the lowest price responsive bid if it selects other than the lowest price responsive bid, and if the CO determines that there is adequate competition, then the CO can issue an award for the subject work and the Lessor shall proceed with the selected bidder. If the CO determines, in his sole discretion, that adequate competition did not exist, the Government may require the Lessor to rebid the subject work. For minor items or for changes to the Scope of Work, as agreed to by the CO, the price does not need to be competitively bid; in such case, a price will be negotiated by the Lessor and the Government, and said price shall be subject to Government cost and pricing policies in effect at the time of submission.

**5.6.11. Unit Costs.** The Lessor shall bid, compile and submit as a component of the competitive proposal, unit costs for certain Fit-Out items mutually agreed to in writing by the Lessor and the Government. Such submissions shall be made after the conclusion of bidding of each Stage or a combination of Stages (as such combination may be accepted by the Government) and shall be based upon unit prices provided by the accepted bidder plus applicable markup percentages for the general contractor, if applicable, and the architect and Lessor, as such percentages are reflected on Schedule 3.1. These unit costs shall be inclusive of labor, material, overhead, profit, architectural/engineering and other design fees, construction administration costs, and all other costs associated with furnishing and installing the product completely to comply with the manufacturer's recommendation for installation and operation and to conform to Applicable Laws and to the best industry standards. These unit costs, upon acceptance by the Government, shall be used to make adjustments to the settled price of a particular Stage or group of Stages should changes in scope occur before Substantial Completion of the last portion of space in that particular Stage or group of Stages.

**5.6.12. Drawing Format.** Drawing levels of detail and quality of representation shall adhere to guidelines within the latest edition of Architectural Graphics Standards. All original drawings shall be of consistent size, at least 30" x 42", each sheet offering a title block, north arrow(s), key plan(s) and graphic scale(s). Two-line representation is required for pipes, ductwork, and equipment which is over one foot finished width. Minimum lettering height shall be 1/8". Floor plans and elevations shall be at least 1/8" = 1'-0" scale, unless otherwise approved. Floor plans and sections/elevations of mechanical/electrical equipment rooms, toilet rooms, food service kitchen and all spaces involving rough-in utilities shall be scaled to not less than 1/4" = 1'-0". All drawings shall be legible when reduced to half of the original size and shall be suitable for microfilm reproduction.

The Lessor shall submit the Fit-Out Construction Documents and As-Built Drawings in electronic format. These electronic drawings shall incorporate polygons/regions drawn to ANSI/BOMA Z65.1 standards and shall include (i) polygon for floor rentable area, (ii)



polygon(s) for all core, building common and floor common areas, and (iii) polygon(s) around an office, conference room or Special Use Space. These polygons will be used to attach region records through the Aperture Space Management Module.

**5.6.13. Specification/Calculation Format.** All submissions in this Section 5.6 shall use standard white bond paper or formatted sheets, 8-1/2" x 11" bound in snap action three-ring notebooks, organized in a logical sequence, tabbed to each of the sixteen (16) CSI divisions. Calculations shall be titled in each analysis clearly indicating subject/problem being studied, applied references, assumptions, and analysis of answers.

**5.6.14. Submission Procedures.** Subject to the provisions of Section 5.4.8, for each submission step described in this Section 5.6, the Lessor shall provide (as part of the Fit-Out if such submission relates to Fit-Out) the Government with four (4) full size copies and fifteen (15) half-sized copies of all drawings and nineteen (19) copies of all specifications and calculations. This is in addition to those quantities the Lessor may require for coordination/use outside the Government. Design submissions shall be made directly to the CO. Submissions shall be made at those times set forth in the approved Project Schedule. Unless specifically authorized by the CO on a case by case basis, no submissions may be handwritten. All submissions shall be computer generated.

**5.7. Tenant Fit-Out Construction/Inspection and Acceptance.**

**5.7.1. Notice To Proceed.** Within five (5) working days after final acceptance of the CDs for a particular Stage and the completion of competitive bidding for that Stage, the Government shall issue a written "Notice To Proceed" to the Lessor.

**5.7.2. Commencement of Work.** Upon receipt of the Notice to Proceed for each Stage, the Lessor shall promptly commence with the construction of the Fit-Out to complete the work for that Stage in accordance with the approved Project Schedule.

**5.7.3. Shop Drawings.** Within ten (10) working days of final acceptance of the CDs for a particular Stage, the Lessor shall submit to the Government a list showing all potential shop drawings for such Stage. The Government shall review such list and shall identify a selective list of drawings and items to review. Shop drawing/product data submissions ("Shop Drawing Submissions") to the Government shall be after review and approval by the Lessor's designer of record. The Lessor shall promptly submit to the Government all such identified shop drawings and product data submissions (e.g., catalog cuts). Shop Drawing Submissions shall be made to the CO and shall include one (1) reproducible copy and six (6) prints of all materials.

The Government shall be allowed ten (10) working days from date of receipt to review these Shop Drawing Submissions. Should Shop Drawing Submissions and/or product changes take place after initial Government review, the Lessor shall resubmit the altered material and the Government shall be allowed an additional ten (10) working days from the date of receipt to review these revised materials.

**5.7.4. Progress Reports.** Throughout the design, construction and initial occupancy of the entire Leased Premises, the Lessor shall submit to the CO written progress reports at intervals

of ten (10) working days. The reports shall include the current status of the Project Schedule, the percentage of work completed by Stage and trade, and a statement of expected completion. The Lessor shall conduct meetings every other week to brief Government personnel and/or Government contractors regarding the progress of design and construction of the Leased Premises. Such meetings shall be held at a location to be designated by the Government. Accurate meeting minutes, prepared by the Lessor and presented to the Government within five (5) working days of such meeting, shall satisfy the requirements of this paragraph to provide progress reports.

**5.7.5. Record Drawings.** The Lessor shall maintain two copies of record drawings ("Record Drawings"), representing a clear, marked-up version of black or blue line CDs, reflecting change orders and actual installations and conditions. Notations on Record Drawings shall be made in red pencil or other color corresponding to different changes or categories of work. Marked-up drawings shall always be maintained at the Lessor's construction office, available for Government review. Record Drawings shall note related change-order designations (numbers) on impacted work. When Shop Drawing Submissions indicate significant variations over design drawings, Shop Drawing Submissions may be incorporated as part of Record Drawings. All notations shall be dated and initialed.

**5.7.6. Inspections and Tests.** The Lessor shall perform inspections and tests as required by Applicable Law and the accepted quality control plan (part of the Development Plan) to assure construction quality and adherence to construction requirements. Tests shall be performed by independent testing organizations, reasonably acceptable to the Government, throughout the construction process, including: before construction start, during construction, and at final construction completion. The Lessor shall notify the Government regarding the schedule of inspections and tests, and the Government shall have the right to monitor said inspections and tests.

**5.7.7. Governmental Inspections.** Periodic "quantity" inspections may be conducted by the Government to support progress payments and/or application of unit price work activities. In addition, subject to the restrictions set forth above in Section 5.3, the Government may conduct periodic overview inspections of the construction to review compliance with the Lease requirements and the final CDs. The Government shall have the right to inspect all Fit-Out construction (open walls, ceilings, floor, etc.) prior to final closure and concealment of such Fit-Out.

**5.7.8. Substantial Completion.** No earlier than five (5) working days prior to substantial completion of each Stage of construction, the Lessor shall issue a written notice to inspect to the Government. Upon receipt of such notice, the Government shall have fifteen (15) working days to inspect and to either accept or reject the subject space. In no event shall the Government be required to inspect more than one Stage in any ten (10) working days. The Government will only "accept" a Stage (each such action being deemed an "acceptance" under this Article V and other provisions of this Lease) upon (a) the Substantial Completion of such space, subject to the later completion of Punchlist Items, and (b) the delivery of a certificate of occupancy, as described below. As a precondition to acceptance of any Stage or any portion thereof, Lessor shall ensure that the temporary/permanent Computer Facility(s), and all main communication vault(s), MDF rooms, switch rooms and communications rooms within such Stage (collectively, the "Computer/Communications Areas") shall be substantially complete to

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the point where the Government can access all of such Computer/Communications Areas for at least ninety (90) days prior to acceptance of such Stage to begin installation and testing of its equipment and cabling for its telecommunications and data services. Acceptance of a Stage shall be confirmed in writing by the CO or COR either by letter or by completion and execution of GSA Form 1204, "Conditional Survey Report," for the Stage or area in question. Space which is not substantially complete will not be accepted by the Government. Should the Government reject the space as not substantially complete as defined herein, the Lessor shall immediately undertake remedial action, and when ready shall issue a subsequent notice to inspect to the Government. Before the Government will accept space, the Lessor shall provide to the CO a copy of either a temporary, conditional or final certificate of occupancy for such space. If Lessor provides a temporary or conditional certificate of occupancy, Lessor shall take all steps necessary to maintain such temporary or conditional certificate of occupancy in force until a final certificate of occupancy is obtained and shall promptly take all steps required or necessary to obtain a final certificate of occupancy for the portion of the Leased Space in question, not including, however, any work of Tenant that must be completed for that particular space to obtain a final certificate of occupancy. The Lessor shall complete all Punchlist Items within twenty (20) working days after receiving the punch list from the Government; provided, however, the Lessor may have a longer time period to correct those Punchlist Items which are inherently incapable of being corrected within twenty (20) working days so long as the Lessor continues to diligently use its best efforts to complete such items and in any event completes such items within an additional 40 working days. If the Lessor fails to complete the corrections to all Punchlist Items in the time periods above, then the Government shall be allowed to correct such Punchlist Items, and shall be entitled to a credit toward the Service Agreement Rent portion of its next rental payments under this Lease equal to one hundred fifteen percent (115%) of the Government's cost of performing such corrective work.

**5.7.9. Commencement.** The term of this Lease and the payment of the Rent reserved hereunder for the entire Leased Premises shall commence 978 days after the Financial Closing (the "Commencement Date"). The Commencement Date shall be confirmed by a Supplemental Lease Agreement to be executed by the Lessor and the Government concurrent with the Financial Closing and shall not be subject to any condition subsequent, including, but not limited to the completion or availability of all or any portion of the Leased Premises for Government use and occupancy. The Commencement Date will become the Lease anniversary date for all purposes of this Lease, including for the purpose of operating cost adjustments. The first "Lease year" shall be the 365-day period beginning on the Commencement Date.

**5.7.10. Building Acceptance/Composite Acceptance Date.** The "Building Acceptance Date" for a particular Building shall mean the composite weighted average of the dates of space acceptances made by the Government in a particular Building (if more than one), or the acceptance date of such Stage if delivered as a single Building, as indicated in the Government's written acceptance of each Stage or of portions of each Stage. The Contracting Officer shall compute, subject to the reasonable approval of Lessor, the composite weighted average by taking into account the date of space acceptance by the Government and the percentage of space delivered in a particular Building relative to the total space in such Building. However, if a Government Delay occurs in a given Stage, then the acceptance date used to compute the composite weighted average shall be the same number of days earlier than

the actual acceptance date as the number of days of Government Delay. Additionally, if Lessor Delay occurs in a given Stage, then the date used to compute the composite weighted average will be the actual acceptance date.

Upon the Government's acceptance of the last Stage, all Building Acceptance Dates shall be blended into a composite weighted average (the "Composite Acceptance Date") which shall be computed by taking into account the date of space acceptance by the Government and the percentage of space delivered as of each Building Acceptance Date relative to the total space leased by the Government.

**5.7.11. Project Delay/Project Savings/Rent-Free Extension.** In the event the Composite Acceptance Date occurs before the Commencement Date, the Government shall not have any liability for, and shall not be required to pay, any Rent, notwithstanding its acceptance and occupancy of all or a portion of the Leased Premises, until the Commencement Date. In the event the Composite Acceptance Date occurs after the Commencement Date, the same shall constitute "Project Delay." In the event of Project Delay, the Government shall be entitled to: (i) access and use the "stand-by funding" escrow to be established by the Lessor as provided in Section 5.1.1; (ii) collect and use any liquidated damages payable by Turner under the Turner Contract and/or from any bonds or insurance related thereto; (iii) access and use any remaining funds in the capitalized interest/interest reserve line item of the Project Budget as of the Commencement Date (including any sums transferred from such line item in anticipation of the Commencement Date so as to avoid application of this clause); and (iv) apply any "Project Savings" (as defined herein), to reimburse the Government for all Rent paid for the period of such Project Delay (but in no event shall the Government be entitled to more than a 100% reimbursement for the Rent it pays for the period of Project Delay). The Government shall be entitled to such reimbursement of Rent before Lessor is entitled to repayment of any of its equity expenditures, as further set forth in this Section below. Lessor agrees to cooperate with the Government in its exercise of the rights described in the preceding sentence. If the Project Delay exceeds forty-five (45) days and if requested by the Government, Lessor agrees to use its best efforts to seek a supplemental bond offering that would reimburse the Government for its additional Rent payments during such Project Delay period, which supplemental bond offering shall be repaid over the Initial Term through an increase in Base Rent hereunder, all subject to then-current market conditions and the cooperation and approval of Lessor and Government, in each case not to be unreasonably withheld, conditioned or delayed.

If the rights provided in the foregoing paragraph are insufficient to reimburse the Government for any rental payment obligations during the period of any Project Delay, the Lessor agrees to extend the term of this Lease on a rent free basis, subject to the limitations set forth below in this paragraph, following the end of the Lease Term including any Extension Term(s) exercised by the Government. Lessor agrees that for each day (or portion thereof) of Base Rent that the Government pays during any Project Delay (and for which the Government has not otherwise been reimbursed in cash), this Lease shall be extended for 4 days (or portion thereof); provided, that, the foregoing shall only be applicable in the event that either (a) the Government exercises any of its Extension Options under this Lease such that the Lease Term is extended for a total period of not less than ten (10) years, in which case the rent-free extension period shall become effective at the end of such Extension Term, or (b) the entirety of the Project Financing is retired prior to the conclusion of the Lease Term (as such Lease Term may be extended pursuant to this Lease). During any rent-free extension time period, the Government shall be responsible only for the payment of the Service Agreement Rent and

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that portion of the Base Rent required to pay real estate taxes and property management fees, and no other rental whatsoever. Lessor shall have the right, in lieu of providing a rent-free extension of this Lease as set forth above, to pay the Government in cash the amount of the Base Rent corresponding to the period of the rent-free extension of this Lease to which the Government would otherwise be entitled. The Lessor and the Government shall execute a Supplemental Lease Agreement to evidence any rent-free extension of the Lease Term as is described in this paragraph.

If following final completion and Government acceptance of the Facility (including the townhouses) and the payment of all costs associated with the acquisition of the Site and the design, development, construction, financing and delivery of the Facility and Leased Premises for the Government's use and occupancy, including any reimbursement to the Government of Base Rent paid for any period of Project Delay as provided above, the repayment of all amounts funded by the Lessor (including its initial \$15 million equity contribution provided for in Section 5.1.1(a) (the "Minimum Initial Equity Requirement") and subsequent cash equity expenditures by Lessor in connection with the design and construction of the Facility) and the funding of all reserves required by Lessor's Lender, but excluding optional redemptions of the bonds in connection with Lessor's financing, there are any unspent contingency funds or other remaining funds from the Financial Closing, including all interest thereon (such positive amounts being the "Project Savings"), then the Lessor and the Government shall promptly share all such amounts equally (i.e., 50-50). With respect to reserves or escrows required by the seller of the Site to Lessor or by Lessor's Lender pursuant to the Project Financing Documents (excluding the Service Reserve Account, but specifically including, without limitation, the Working Capital Account and the Capital Reserve Account, as defined in the Project Financing Documents), at such time as all or a portion of each such reserve or escrow becomes available under the Project Financing Documents for distribution to Lessor, such reserve funds shall be distributed as follows: (i) first, to Lessor to repay any equity contributions by Lessor over the Minimum Initial Equity Requirement, (ii) second, to the Government up to \$20 million to the extent such \$20 million has not previously been paid pursuant to Section 5.1.1(a), (iii) third, to Lessor up to \$15 million to repay the Lessor for its Minimum Initial Equity Requirement, and (iv) fourth, to Lessor and the Government in equal amounts (i.e., 50-50). In no event shall any line item in the Project Budget payable to Lessor or any affiliate of Lessor be increased from the original amount included in the Project Budget as of the date hereof until after the calculation of Project Savings has been made and agreed to by the Government. The calculation of Project Savings shall not be affected by any changes made to the general scope of this Lease in accordance with Section 9.27 below.

From time to time, as requested by the Government, and in any event within ninety (90) days after Government acceptance of the final portion of the Facility, Lessor shall deliver to the Government a certification in the form of Schedule 5.7.11 attached hereto (the "Certification"), which certification shall, among other things: include Lessor's calculation of Project Savings and an accounting of Lessor's equity, including any amounts previously held in the reserves or escrows as described in this Section 5.7.11 above and subsequently released to Lessor; include a statement confirming that no change orders under the Turner Contract have been made for design-related matters unless such change order was expressly approved in writing by the Government; attach a copy of the certification from Turner described in Section 5.1.1(l) above; and calculate the amount of any reimbursement owed to the Government in accordance with the provisions of this Section 5.7.11. After receipt of the Certification, the Government shall



have sixty (60) days to review the information set forth therein, as well as such additional invoices, receipts and other back-up information as may be requested by the Government, which Lessor agrees to provide when it submits the Certification as well as promptly following any subsequent Government request. Any dispute as to the amount of the Project Savings shall be addressed in accordance with Section 9.29 below.

**5.7.12. Delay.** Should either the Government or the Lessor fail to discharge their responsibilities as defined in this Lease by the Schedule Milestones established in the approved Project Schedule, such shall constitute "Delay." Delay caused by either party may be offset by the early completion of that party's other responsibilities within the Project Schedule for that particular Stage. The absolute value of the number of days of Government delay (Gd) minus the number of days of Lessor delay (Ld) shall equal the total number of days of "Delay" (D) in a given Stage ( $Gd-Ld=D$ ). Delay shall be attributed to the party having caused the greatest number of days of Delay in such Stage and shall be termed either "Lessor Delay" or "Government Delay" as appropriate.

**5.8. Occupancy/General Provisions.**

**5.8.1. HVAC System Retesting.** Within twenty (20) working days after occupancy of each Stage, the Government may require the Lessor to retest the HVAC system in up to ten percent (10%) of the space in that Stage as designated by the Government. To the extent that if, for any of such retested areas, the retest results deviate from the temperature and humidity specifications set forth in this Lease, the Lessor shall perform all required system adjustments and shall retest the entire zone in which the nonconforming space is located until the Lessor certifies to the Government that all such specifications have been met.

**5.8.2. Warranties and Guarantees.** All equipment or material warranties and guarantees shall begin on the applicable Commencement Date for a particular Building utilizing said equipment or material. The Lessor shall combine copies of all warranties and guarantees, final certifications and similar documents into binders and shall maintain and update said binders for the Government throughout the Lease Term. Information shall be bound in three-ring binders and fitted with tab sheets. All contents shall be legible, first generation photocopies or prints of published material. Each binder shall be appropriately titled and provided with an introduction and table of contents. The information shall be divided into sections corresponding to CSI specification headings.

**5.8.3. Manuals.** The Lessor shall combine all shop drawings, finish samples, product submission material and test reports into hard copy manuals and shall maintain and update the same for the Government throughout the Lease Term. Manuals shall be bound in three-ring binders and fitted with tab sheets. All contents shall be legible, first generation photocopies or prints of published material. Each manual shall be appropriately titled and provided with an introduction and table of contents. Should the Government establish that a manual does not represent as-built conditions or materials, the manuals shall be corrected by the Lessor to the satisfaction of the Government. The manuals shall be divided into sections corresponding to CSI specification headings.

**5.8.4. As-Built Drawings.** The Lessor shall perform field measurements and Shop Drawing Submission takeoffs as required to create accurate as-built drawings ("As-Built

Drawings"). The as-built drawings shall be completed in the most current "AutoCad" version acceptable to the Government. The Lessor shall provide to the Government such As-Built Drawings with reasonable promptness (and in any event within one hundred eighty (180) days) following the substantial completion of each Stage. The A/E will incorporate all changes to the structure and systems that occur during the course of design and construction. The completed As-Built Drawings shall be a true architectural and engineering representation of the entire Facility.

**5.8.5. Record Specifications.** The Lessor shall maintain two (2) copies of the project's design specifications updated to include all Government approved deviations and modifications. Specification updates shall reference related Record Drawings and product data, where applicable.

**5.8.6. Shop Drawings/Product Data.** The Lessor shall maintain two (2) copies of all reviewed Shop Drawing Submissions, including required product certification and laboratory test reports. Shop Drawing Submissions and product data updates shall reference related change orders and associated Record Drawings and specifications.

**5.8.7. Post Acceptance Alterations.**

(a) Prior to acceptance of the final Stage (but not as a condition thereof), the Lessor shall propose unit costs for certain Fit-Out items mutually agreed to in writing by the Lessor and the Government, to govern all Government-requested alterations from and after the Commencement Date. The parties agree to negotiate in good faith such unit costs based upon then-prevailing market costs, and shall agree to a final unit costs agreement (the "Unit Price Agreement") within six months after the Commencement Date. Should the Lessor fail to negotiate pricing for the Unit Price Agreement in good faith within such time period, the CO may issue a unilateral SLA for the Unit Price Agreement.

(b) Negotiation of the Unit Price Agreement will include the negotiation of an annual escalation factor, to be established by reference to a standard Department of Labor index, such as the construction cost index. The prices initially negotiated for the Unit Price Agreement will be in effect for one year from the date of acceptance of the Unit Price Agreement by the CO. For the following year, the negotiated escalation factor will be applied to the initially negotiated costs and the resulting prices will be in effect for that year. At the end of the second Lease year and the end of each Lease year thereafter, a new escalation factor will be negotiated for the following Lease year, or failing agreement, established by the CO pursuant to a unilateral SLA.

(c) At the discretion of either the CO or the Lessor, any single Unit Price Agreement item may be renegotiated on a case by case basis if the rate of cost for any item (material and/or labor) greatly exceeds the escalation rate or is significantly less than the escalation rate.

(d) Negotiation of the Unit Price Agreement will include negotiation of an acceleration fee. The acceleration fee will be used at the sole discretion of the CO or

COR when the alteration work is required to be completed in three (3) working days or less. The Lessor will not be entitled to an acceleration fee for merely completing alteration work in a timely manner.

(e) In certain instances where the cost of Government-requested alterations is particularly high or the nature of such alterations is unique, the Lessor may be requested by the Government to provide a price proposal for the alterations. Such proposals will be submitted within fifteen (15) working days of the Government's request and definition of the scope of work, which may include the Lessor's production of drawings and specifications. Orders will be placed by issuance of a GSA Form 276, Supplemental Lease Agreement, a GSA Form 300, Order for Supplies or Services, or a tenant agency approved form. Sections 3.4.1 and 3.4.3 apply to orders for alterations. All orders are subject to the terms and conditions of this Lease. To the extent applicable, all alterations shall also be accomplished in accordance with the requirements of Sections 9.31 and 9.32.

(f) Orders may be placed by the CO or COR. They may also be placed by occupant agency officials when specifically authorized to do so in writing by the CO. The CO will verify the authority and/or limitations of such authority of occupant agency officials upon the Lessor's written request.

(g) Payments for alterations ordered by an occupant agency official will be made directly by the occupant agency placing the order.

(h) As described more fully in Section 6.8.4, the Lessor has agreed to operate and maintain all equipment installed by the Lessor pursuant to any post-acceptance alterations requested by the Government. If these or any other post-acceptance alterations requested by the Government result in an increase in the Lessor's operations and maintenance costs, the Lessor shall submit a proposal, together with all appropriate supporting cost materials, to increase the operating cost base and Service Agreement Rent under this Lease, and the Government and the Lessor hereby agree to reasonably negotiate the amount of any such increase and to reflect such negotiated agreement in an SLA.

**5.8.8. Government Contracted Work.** During the process of design and construction, the Lessor will, at no additional cost to the Government, make site and record access available to the CO and his representative(s) for all purposes, provided, however, that said access does not delay or materially impede the Lessor's performance under this Lease. The Lessor shall reasonably permit the Government to perform work in Leased Premises prior to Substantial Completion, provided, however, that said work does not delay or materially impede the Lessor's performance under this Lease. The parties shall cooperate with each other in the scheduling and coordination of work by the Government's direct contractors such as communications installers (voice/data/security), raised floor installers, wire installers (voice/data/security), security installers, fire system installers, IT infrastructure installers and furniture vendors. The CO shall coordinate with the Lessor in order to minimize conflicts with and disruptions to the general contractor and other contractors on site.

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**5.8.9. Government Staging Area/Temporary Office.** During the four (4) months prior to delivery of the first Stage and thereafter until occupancy of the entire Leased Premises, the Lessor shall provide, at no additional cost to the Government, 1,000 square feet of office space equipped with power and telephone line service. The Government will equip and fund furniture, phones, phone service and basic office machines for this area. Throughout the construction period, the Lessor shall also provide, within a building at or near the Facility, a lockable 1,500 - 2,000 square foot staging area for receipt of electronics, as well as parking spaces for two (2) 48' storage trailers with access to each building's loading docks. While such storage trailers shall have periodic access to such loading docks, the Government acknowledges that the Lessor shall coordinate such access so as to permit other parties, including the general contractor and other contractors to have access as they may reasonably require.

**5.8.10. Authorization of Changes.** As set forth in Section 5.6.10(a), the Lessor fee, the general contractor fee and the architectural/engineering fee set forth in Schedule 3.1 shall be applied for all additive or deductive changes of scope to the Fit-Out at any time prior to acceptance of the entire Leased Premises. All proposed changes and change orders shall be accomplished in accordance with this Lease, including without limitation, Section 9.27 below. If the Government requests deductive changes for which the Lessor has already performed design and/or construction work, the Lessor shall be reimbursed by the Government for such work.

**5.8.11. Building Systems Certification.** Whenever requested prior to, or semi-annually during, the Lease Term, the Lessor shall furnish, at no cost to the Government, a certification by a registered professional engineer that each building and its systems, as designed or constructed, as applicable, will satisfy or does satisfy, the requirements of this Lease.

**5.8.12. Project Information.** It shall be the sole responsibility of the Lessor to obtain all information required to successfully complete each task described in this Article V, other than the information provided by the Government. The Lessor shall undertake a program of primary data collection in those areas where existing data does not exist, is not valid, or is not sufficient to perform thorough analyses. In cases where the Lessor believes that available information is inadequate or is of such poor quality that the integrity of the study conclusions may be compromised, the Lessor shall substantiate its position and shall propose specific data collection efforts which it believes are necessary.

**5.8.13. Proprietary Information.** The Lessor and its contractors, subcontractors and consultants shall not disclose any information or data that is proprietary to the Government. All such information or data is reserved exclusively for use between the Government and the Lessor. When deemed appropriate, the Government may authorize the release of certain information or data necessary for use by the Lessor or the Project Team in performance of design or construction work, and in such cases specific written authorization shall be given in advance. Such data so released shall not be further disseminated and shall not be considered released into the public domain. The Lessor shall ensure that this Section 5.8.13 is included in all tiers of contracts and subcontracts. The Lessor is required to develop and utilize procedures for custody, use/handling, reproduction, preservation, storage, safeguarding, and disposition of all documents and information of this nature. These procedures shall be designed and carried out so that there is no unauthorized disclosure of such documents and

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information throughout the course of contract performance. In the event that performance of any work under this Lease causes the Lessor to gain access to proprietary and/or confidential information of other firms, the Lessor is required to immediately execute technology exchange agreements with those firms, in order to protect the information from unauthorized uses. The Lessor is required to refrain from using any such information for any purposes other than for which it was furnished. The Lessor shall immediately provide the CO with a copy of any such agreements, certified as true and complete by Lessor. This paragraph shall not limit the release of "permit" copies of the CDs.

**5.9. Labor Standards.** The Lessor acknowledges that the following Federal Acquisition Regulation clauses shall apply to work performed in preparation for occupancy and use of the Leased Premises by the Government:

52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation
52.222-6	Davis-Bacon Act
52.222-7	Withholding of Funds
52.222-8	Payrolls and Basic Records
52.222-9	Apprentices and Trainees
52.222-10	Compliance with Copeland Act Requirements
52.222-11	Subcontracts (Labor Standards)
52.222-12	Contract Termination-Debarment
52.222-13	Compliance with Davis-Bacon and Related Act Regulations
52.222-14	Disputes Concerning Labor Standards
52.222-15	Certification of Eligibility

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